

ASSEMBLY BILL No. 200—ASSEMBLYWOMAN GORELOW

FEBRUARY 18, 2019

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Referred to Committee on Judiciary

**SUMMARY**—Revises provisions relating to the use of cellular devices while driving. (BDR 43-845)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted material]** is material to be omitted.

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AN ACT relating to motor vehicles; authorizing a peace officer at the scene of a traffic crash to use technology to determine if a driver was using a handheld wireless communications device at the time of the crash; requiring the suspension of the driver's license of a driver who refuses a request by a peace officer to use such technology; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law prohibits the use of a handheld wireless communications device  
2 while operating a motor vehicle, with certain exceptions for hands-free use and use  
3 by certain persons authorized to use such a device. (NRS 484B.165) Existing law  
4 also authorizes a peace officer at the scene of a traffic crash to issue a traffic  
5 citation or a misdemeanor citation to any person involved in the crash if the peace  
6 officer has reasonable and probable grounds to believe the person has committed, in  
7 connection with the crash, a violation of certain motor vehicle laws or motor carrier  
8 laws. (NRS 484A.660)

9 **Section 1** of this bill authorizes a peace officer at the scene of a traffic crash to  
10 request access to the handheld wireless communications device of the driver of any  
11 vehicle involved in the crash if the peace officer has reasonable and probable  
12 grounds to believe the driver, at or near the time of the crash, was using the  
13 handheld wireless communications device while operating the motor vehicle  
14 involved in the crash. The peace officer may use an investigative technology device  
15 on the handheld wireless communications device to determine if the handheld  
16 wireless communications device was used during a particular time frame. **Section 1**  
17 defines "investigative technology device" as a device that, by means of analysis  
18 software or other technology, can interrogate a handheld wireless communications  
19 device and display evidence of whether the device was used for handheld or manual  
20 communications or access to data in a given time frame. **Section 1** also provides  
21 that the peace officer may only access and view evidence of use of the handheld  
22 wireless communications device and prohibits the peace officer from intentionally



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23 accessing or viewing any other content on the handheld wireless communications  
24 device. **Section 1** further provides that any person who operates a vehicle in this  
25 State is deemed to have given consent to the use of an investigative technology  
26 device on the handheld wireless communications device when requested by a peace  
27 officer at the scene of a crash. If a person refuses such a request, the peace officer is  
28 required to seize the driver's license or permit of the person and issue an order  
29 suspending the license or permit for 90 days. The peace officer may issue a  
30 temporary driver's license to the person if the person is eligible for such a license,  
31 which is effective for only 7 days. A person whose driver's license or permit is  
32 suspended in this manner may request a hearing by the Department of Motor  
33 Vehicles to review the suspension, and the decision made by the Department after  
34 such a hearing is subject to judicial review. Finally, **section 1** authorizes the  
35 admissibility of evidence obtained through the use of an investigative technology  
36 device in a criminal or administrative proceeding only if it is shown by  
37 documentary or other evidence that: (1) the device was functioning properly and  
38 able to produce reliable, accurate results; and (2) the peace officer was trained in  
39 the proper use of the device and used the device properly.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1       **Section 1.** Chapter 484E of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       *1. Any person who drives or is in actual physical control of a  
4 vehicle on a highway or on premises to which the public has  
5 access shall be deemed to have given his or her consent to the use  
6 by a peace officer of an investigative technology device on any  
7 handheld wireless communications device in the possession of the  
8 person when such use is requested by the peace officer at the  
9 scene of a traffic crash pursuant to subsection 2. If the person  
10 refuses the request of the peace officer to use an investigative  
11 technology device on the handheld wireless communications  
12 device, the officer shall seize the driver's license or permit of the  
13 person pursuant to subsection 5, and any such driver's license or  
14 permit must be suspended for 90 days.*

15       *2. A peace officer at the scene of a traffic crash may request  
16 access to the handheld wireless communications device in the  
17 possession of the driver of any vehicle involved in the crash for  
18 the purpose of using an investigative technology device on the  
19 handheld wireless communications device when, based upon  
20 personal investigation, the peace officer has reasonable and  
21 probable grounds to believe the driver violated NRS 484B.165 at  
22 or near the time of the crash.*

23       *3. When using an investigative technology device on a  
24 handheld wireless communications device pursuant to this section,  
25 a peace officer may access and view only evidence of use of the  
26 handheld wireless communications device which violates*



1   **NRS 484B.165 and shall not intentionally access or view any other**  
2   **content on the handheld wireless communications device.**

3   **4. Evidence obtained by the use of an investigative technology**  
4   **device pursuant to this section is admissible in a criminal or**  
5   **administrative proceeding only if it is shown by documentary or**  
6   **other evidence that at the time of use:**

7   **(a) The device was functioning properly and able to produce**  
8   **reliable, accurate results; and**

9   **(b) The peace officer was trained in the proper use of the**  
10   **device and used the device properly.**

11   **5. If a driver refuses the request of a peace officer pursuant**  
12   **to subsection 2 the officer shall immediately serve a 90-day order**  
13   **of suspension of the license, permit or privilege to drive on the**  
14   **person who failed to submit to the request by the officer and seize**  
15   **the license or permit to drive of the person. The officer shall then,**  
16   **unless the information is expressly set forth in the order of**  
17   **suspension, advise the person of his or her right to administrative**  
18   **and judicial review of the suspension pursuant to this section and,**  
19   **except as otherwise provided in this subsection, that the person**  
20   **has a right to request a temporary license. If the person currently**  
21   **is driving with a temporary license that was issued pursuant to this**  
22   **section, the person is not entitled to request an additional**  
23   **temporary license pursuant to this section, and the order of**  
24   **suspension issued by the officer must suspend the temporary**  
25   **license that was previously issued. If the person is entitled to**  
26   **request a temporary license, the officer shall issue the person a**  
27   **temporary license on a form approved by the Department if the**  
28   **person requests one. The temporary license must be effective for**  
29   **only 7 days including the date of issuance. The officer shall**  
30   **immediately transmit the person's license or permit to the**  
31   **Department along with the written certificate that the officer had**  
32   **reasonable and probable grounds to believe that the person**  
33   **violated NRS 484B.165 at or near the time of the crash. The**  
34   **certificate must also indicate whether the officer issued the person**  
35   **a temporary license.**

36   **6. At any time while a person is not eligible for a license,**  
37   **permit or privilege to drive following an order of suspension**  
38   **issued pursuant to subsection 5, the person may request in writing**  
39   **a hearing by the Department to review the order of suspension, but**  
40   **the person is only entitled to one hearing. The hearing must be**  
41   **conducted as soon as is practicable at any location, if the hearing**  
42   **officer permits each party and witness to attend the hearing by**  
43   **telephone, videoconference or other electronic means. The**  
44   **Director or agent of the Director may issue subpoenas for the**  
45   **attendance of witnesses and the production of relevant books and**



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*papers and may require a reexamination of the requester. Unless  
2   the person is ineligible for a temporary license pursuant to  
3   subsection 5, the Department shall issue an additional temporary  
4   license for a period which is sufficient to complete the  
5   administrative review.*

6   

*7. The scope of the hearing conducted pursuant to subsection  
7   6 must be limited to whether the person refused the request of the  
8   peace officer to use an investigative technology device on the  
9   handheld wireless communications device in the possession of  
10   the person at the time of the crash pursuant to this section. Upon  
11   an affirmative finding on this issue, the Department shall affirm  
12   the order of suspension. Otherwise, the order of suspension must  
13   be rescinded.*

14   

*8. If, after the hearing, the order of suspension is affirmed,  
15   the person whose license, privilege or permit has been suspended  
16   is entitled to a review of the same issues in district court in the  
17   same manner as provided by chapter 233B of NRS. The court  
18   shall notify the Department upon the issuance of a stay, and the  
19   Department shall issue an additional temporary license for a  
20   period which is sufficient to complete the review.*

21   

*9. If a hearing officer grants a continuance of a hearing held  
22   pursuant to subsection 6 at the request of the person whose  
23   license, permit or privilege to drive was suspended, or a court does  
24   so after issuing a stay of the suspension, the officer or court shall  
25   notify the Department, and the Department shall cancel the  
26   temporary license and notify the holder by mailing the order of  
27   cancellation to the person's last known address.*

28   

*10. If a person refuses the request of the peace officer to use  
29   an investigative technology device on the handheld wireless  
30   communications device of the person pursuant to this section,  
31   evidence of that refusal is admissible in any criminal or  
32   administrative action arising out of the acts alleged to have been  
33   committed by the person while the person was engaging in  
34   conduct prohibited by NRS 484B.165.*

35   

*11. This section does not preclude:*

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*(a) The prosecution of a person for a violation of any other  
37   provision of law; or*

38   

*(b) The suspension or revocation of a person's license, permit  
39   or privilege to drive pursuant to any other provision of law.*

40   

*12. As used in this section, "investigative technology device"*  
41   means a device that, by means of analysis software or other  
42   technology, can interrogate a handheld wireless communications  
43   device to determine and display evidence of whether the  
44   handheld wireless communications device was used for handheld



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1   *or manual communications or access to data in a given time*  
2   *frame.*

(30)







